



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2139-1997 (O&M)

Girwar Singh

. . . . Appellant

Vs.

State of Haryana and another.

. . . . Respondents

Reserved on: 08.05.2026

Pronounced on: 01.07.2026

Pronounced fully/operative part: Fully

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Abhishek Shukla, Advocate and
Mr. Rajinder Goel, Advocate for
the appellant.

Mr. Gaurav Garg, AAG, Haryana.

DEEPAK GUPTA, J.

The plaintiff is in second appeal before this Court against the judgment & decree dated 27.02.1997 passed by the learned Additional District Judge, Gurugram, whereby the appeal preferred by the defendants was accepted, the judgment & decree dated 29.07.1991 passed by the learned Trial Court, Gurugram were set aside and consequently, the suit filed by the plaintiff for declaration and consequential relief of permanent injunction came to be dismissed.



2. For the sake of convenience and to avoid any confusion, the parties are being referred to as per their status before the learned trial Court. The trial Court record was summoned and has been carefully perused.

3. The dispute pertains to land measuring 68 Kanal 13 Marla situated in the revenue estate of Village Wazirpur, Tehsil and District Gurugram, fully detailed in paragraph No.7 of the plaint (*hereinafter referred to as "the suit land"*).

4.1 The case set up by the plaintiff is that he had purchased land measuring 191 Kanal 3 Marla, including the suit land, from one Raghunath Singh through a registered sale deed dated 03.04.1978. Prior to the purchase, he made due enquiry regarding the title of the vendor and found Raghunath Singh to be duly recorded as owner in possession in the revenue record. On the basis of the aforesaid sale deed, possession of the land was delivered to the plaintiff and the corresponding mutation was also sanctioned in his favour. Since the date of purchase, the plaintiff claims to have remained in continuous possession of the suit land as owner thereof.

4.2 It was further pleaded that at the time of purchase, the entire land was banjar and uncultivable. According to the plaintiff, after purchasing the land, he installed a tube-well and spent considerable amount in making the land cultivable and productive. The plaintiff also asserted that his name continued to be reflected in the revenue record as owner in possession on the basis of the registered sale deed.



4.3 The grievance to the plaintiff arose, when he learnt that the revenue authorities, without issuing any notice to him and behind his back, had entered mutation No.927 dated 21.10.1985 proposing to vest ownership of the suit land in the State. Upon further enquiry, the plaintiff came to know that the suit land had allegedly been declared surplus area in the hands of Raghunath Singh vide order dated 30.11.1959 passed by the Collector, Gurugram.

4.4 Challenging the said order, the plaintiff pleaded that the order dated 30.11.1959 was wholly illegal, void, without jurisdiction and not binding upon his rights, inasmuch as the suit land was banjar land on the date of filing of Form 'F' as well as on the date, when the surplus area proceedings culminated in the order dated 30.11.1959. According to him, such land could not legally have been declared surplus under the applicable law. The plaintiff further claimed himself to be a bona fide purchaser for valuable consideration without notice of any defect in the title and asserted that he had made substantial improvements over the land after purchase.

4.5 The plaintiff also alleged negligence on the part of the defendants-State authorities inasmuch as despite the alleged declaration of surplus area, the land was never allotted to any eligible person and the revenue record was also not updated for several years, thereby enabling Raghunath Singh to continue to appear as owner in possession and consequently execute the sale deed in favour of the plaintiff.

4.6 On the basis of the aforesaid pleadings, the plaintiff sought a decree for declaration to the effect that he is owner in possession of the suit



land and that the order dated 30.11.1959 declaring the land surplus, along with consequential mutation entries, are illegal, null and void and not binding upon his rights. A consequential decree for permanent injunction restraining the defendants from interfering in his peaceful possession over the suit land was also prayed for.

5.1 Upon notice, the defendants contested the suit and raised various preliminary objections, inter alia, regarding maintainability of the suit, jurisdiction of the Civil Court, limitation, want of notice under Section 80 CPC and non-joinder of necessary parties.

5.2 On merits, the defendants pleaded that Raghunath Singh was a big landowner owning land measuring 525 Kanal 9 Marla in village Wazirpur and that the suit land, along with other land, had already been declared surplus by the Collector, Gurugram vide order dated 30.11.1959. It was further averred that intimation regarding the declaration of surplus area had duly been issued to Raghunath Singh on the same date. According to the defendants, once the land stood declared surplus, Raghunath Singh ceased to have any right or authority to alienate the same and, therefore, the sale deed executed in favour of the plaintiff did not confer any valid title upon him. The defendants also pleaded that mutations No.926 and 927 dated 21.10.1985 had rightly been sanctioned in favour of the State in respect of the surplus land. Denying all other averments made in the plaint, the defendants prayed for dismissal of the suit.



6. In the replication filed by him, the plaintiff reiterated the averments made in the plaint and denied those contained in the written statement.

7. Necessary issues were framed by the learned trial Court and the parties were afforded adequate opportunities to lead evidence in support of their respective pleadings.

8.1 Upon appreciation of the oral as well as documentary evidence available on record, the learned trial Court decreed the suit filed by the plaintiff.

8.2 While returning its findings, the learned trial Court examined the relevant revenue record, including the jamabandis for the years 1956-57 to 1981-82, and found that Raghunath Singh continued to be recorded as owner in possession of the entire suit land till the year 1976-77. The Court further found that vide registered sale deed dated 03.04.1978 (Ex.P2), the plaintiff had purchased the suit land from Raghunath Singh for a sale consideration of ₹35,000/-. Prior thereto, an agreement to sell dated 24.10.1977 (Ex.P1) had also been executed in favour of the plaintiff. Both the agreement to sell as well as the sale deed were duly proved on record through the testimony of attesting witnesses, namely PW-1 - Shri J.K. Maheshwari, Advocate and PW-3 Shri B.S. Chhilar, Advocate, apart from the statement of PW-2 i.e. plaintiff Girwar Singh himself.

8.3 The learned trial Court further noticed that no reference whatsoever to the order dated 30.11.1959 passed by the Collector declaring the suit land as surplus was reflected in the revenue record, at the time the plaintiff



purchased the land. It was consequently held that the plaintiff had made bona fide enquiries regarding the title of the vendor before entering into the transaction and, therefore, he was a bona fide purchaser for valuable consideration and was lawfully in possession of the suit land. The Court also recorded a finding that after purchasing the land, the plaintiff had fenced the same with barbed wires and had incurred substantial expenditure in reclaiming and cultivating the land.

8.4 The learned trial Court further held that the Civil Court had jurisdiction to entertain and adjudicate the controversy involved in the present suit. On the issue of limitation, it was observed that since the order dated 30.11.1959 had never been reflected in the revenue record, the plaintiff could not reasonably be expected to have knowledge thereof prior to the year 1985. According to the trial Court, it was only upon the entry of mutation on the basis of the said order in the year 1985 that the plaintiff came to know about the declaration of surplus area and, therefore, the suit instituted thereafter was within limitation.

8.5 The trial Court also recorded a categorical finding that from the year 1956-57 onwards till the purchase of the land by the plaintiff in the year 1978, the suit land had consistently been recorded in the revenue record as “banjar qadim”. The Court held that such land could not legally be taken into consideration while computing the holding of a big landowner, as the same did not fall within the ambit of Section 4(1) of the Punjab Tenancy Act. Proceeding on that basis, the learned trial Court held the order dated 30.11.1959 passed by



the Collector, Gurugram declaring the suit land surplus to be illegal, null and void and without jurisdiction.

8.6 Consequently, the suit of the plaintiff was decreed by declaring him to be owner in possession of the suit land. A decree of permanent injunction was also granted restraining the defendants from interfering in the possession of the plaintiff over the suit land and from sanctioning or attesting any mutation regarding transfer of the land in favour of the defendants.

9.1 Aggrieved against the aforesaid judgment & decree, the defendants preferred an appeal before the learned first Appellate Court, which reversed the findings returned by the trial Court and allowed the appeal vide judgment & decree dated 27.02.1997.

9.2 The learned first Appellate Court noticed that it was only after the filing of the written statement by the defendants that the plaintiff had sought amendment of the plaint so as to specifically challenge the order dated 30.11.1959 passed by the Collector declaring the suit land surplus, claiming that he had acquired knowledge thereof only upon disclosure by the defendants. The Appellate Court, however, affirmed the finding of the trial Court to the extent that the plaintiff had purchased the suit land vide registered sale deed dated 03.04.1978 Ex.P2) and that the land was banjar in nature at the time of such purchase.

9.3 The first Appellate Court further observed that though banjar land may not ordinarily be includable while computing the holding of a landowner for the purposes of surplus proceedings, yet no such objection had ever been



raised by the original landowner Raghunath Singh during the surplus proceedings. Reliance in this regard was placed upon the judgment rendered in ***“Nand Ram vs. Financial Commissioner, Planning, Punjab”, 1971 PLJ 376,*** wherein it had been held that if banjar qadim land is taken into consideration while determining surplus area and no objection is raised by the landowner before the Collector, such objection cannot subsequently be permitted to be raised at a later stage.

9.4 The learned Appellate Court also relied upon the statement of Raghunath Singh (Ex.D4) recorded during the surplus proceedings, wherein he had not asserted that the land in dispute was banjar qadim. Further reliance was placed upon Section 12(1) of the Haryana Ceiling on Land Holdings Act, 1972 to hold that once land is declared surplus, the same stands vested in the State Government free from all encumbrances and all rights, title and interest of every person therein stand extinguished by operation of law.

9.5 Proceeding further, the learned first Appellate Court held that there could be no estoppel against a statute and, therefore, merely because the revenue entries had not been corrected for a considerable period of time, the plaintiff could not derive any legal advantage therefrom nor could he claim the status of a bona fide purchaser. Accordingly, the findings recorded by the learned trial Court declaring the order dated 30.11.1959 to be illegal and void were reversed.

9.6 The first Appellate Court ultimately held that the order declaring the land surplus was valid and binding and that the plaintiff had acquired no



lawful title in the suit land. Consequently, the judgment & decree passed by the learned trial Court were set aside and the suit filed by the plaintiff stood dismissed vide judgment & decree dated 27.02.1997.

10.1 Assailing the judgment and decree passed by the learned first Appellate Court, learned Senior Counsel appearing on behalf of the appellant-plaintiff has vehemently argued that there is, in fact, a concurrent finding recorded by both the Courts below that the suit land was “banjar qadim” not only from the year 1956-57 onwards but even at the time, when it was declared surplus vide order dated 30.11.1959. It is contended that once the land in question was admittedly banjar qadim, the same could not legally have been included while determining the permissible area or surplus area of the land owner under the applicable agrarian laws.

10.2 In support of the aforesaid contention, reliance has been placed upon the judgment of Hon’ble the Supreme Court in ***Munshi Ram etc. vs. Financial Commissioner Haryana etc., 1979 PLJ 182***, wherein it was held that Banjar Qadim, Banjar Jadid and Gair Mumkin land existing as on 15.04.1953 are liable to be excluded while computing the permissible area of a landowner. Reliance has also been placed upon the Division Bench judgment of this Court in ***Gopal Ram & Ors. vs. State of Haryana & Ors., 1995 (2) CurLJ 32***, wherein it was held that Banjar Qadim and Banjar Jadid lands do not fall within the ambit of the definition of “land” as the same are neither occupied nor let for agricultural purposes or for purposes subservient thereto and, therefore, such lands cannot be taken into consideration while determining the surplus area.



Learned Senior Counsel has further referred to the judgments rendered in ***Lall Singh & Ors. vs. Shri Saroop Krishen, FC & Ors., 1972 PLJ 445***; and ***Ved Prakash & Ors. vs. State of Haryana & Anr. 2012 (2) RCR (Civil) 121*** reiterating the same proposition of law.

10.3 Learned Senior Counsel has specifically drawn the attention of this Court to the findings recorded by the learned first Appellate Court itself, wherein it was observed that banjar qadim land could not legally be included while calculating the holding of a big landowner for purposes of declaring surplus area. It is argued that once the very inclusion of the suit land in the surplus pool was contrary to law, the order dated 30.11.1959 was void *ab initio* and without jurisdiction. According to the learned counsel, mere omission on the part of the original landowner Raghunath Singh to raise an objection during the surplus proceedings could not validate an order, which was inherently illegal and contrary to the statutory provisions.

10.4 It has further been argued that though the State claims that the suit land had been declared surplus in the year 1959, no corresponding entry was ever incorporated in the revenue record for decades thereafter. Neither any mutation nor any Rapat roznamcha reflecting vesting of the suit land in the State was brought on record. On the contrary, the jamabandis continued to depict Raghunath Singh as owner in possession of the suit land till the year 1976-77. Learned Senior Counsel submits that the plaintiff purchased the suit land in the year 1978 only after conducting bona fide enquiries from the revenue record and after satisfying himself regarding the title of the vendor.



Since the revenue entries consistently reflected Raghunath Singh as owner in possession, the plaintiff cannot be faulted for acting upon such official record. It is, thus, contended that the plaintiff squarely falls within the protection afforded to a bona fide purchaser under Section 41 of the Transfer of Property Act, 1882 and cannot be deprived of his rights merely on the basis of an order allegedly passed in the year 1959, which was neither reflected in the revenue record nor acted upon for decades.

10.5 Learned Senior Counsel accordingly submits that the well-reasoned judgment passed by the learned trial Court has been illegally reversed by the learned first Appellate Court and, therefore, the impugned judgment and decree dated 27.02.1997 deserve to be set aside and those passed by the learned trial Court restored.

11.1 *Per contra*, learned State counsel has supported the judgment passed by the learned first Appellate Court. It is argued that the suit land had already been declared surplus vide order dated 30.11.1959 and during the said proceedings, Raghunath Singh never raised any objection that the land in question was banjar qadim. Once no such objection was raised at the relevant stage, neither the landowner nor any person claiming through him can subsequently challenge the legality of the surplus proceedings. According to the learned State counsel, the learned first Appellate Court rightly held the order dated 30.11.1959 to be legal and binding.

11.2 It has further been argued on behalf of the State that after sanction of mutation in favour of the State in the year 1985, the suit land already stands



allotted to Ram Saran @ Shera and Ranjeet @ Bhima and, therefore, no relief can now be granted to the plaintiff.

12. In rebuttal, learned Senior Counsel for the appellant has pointed out that there is neither any pleading nor any cogent evidence on record to establish that the suit land had actually been allotted to any third party after sanction of mutation in the year 1985. It is submitted that the suit itself had been instituted in the year 1985 immediately upon knowledge of the impugned mutation and yet the defendants failed to disclose either the date of allotment or the particulars thereof. It is further argued that any such allotment, even if assumed to have been made, would itself be illegal in view of the fact that the plaintiff had already purchased the suit land through a registered sale deed in the year 1978 and had remained in settled possession thereof.

13. This Court has considered submissions of learned counsel for the both the parties at considerable depth and has carefully examined the entire record of the case.

14. The principal question, which arises for consideration in the present appeal is as to whether land admittedly recorded as banjar qadim could legally have been included in the holding of a landowner for purposes of declaration of surplus area and, if not, whether the order dated 30.11.1959 passed by the Collector could still be sustained merely because the original landowner had not objected thereto at the relevant time.

15. From the pleadings and evidence on record, it emerges as an undisputed position that the suit land was consistently recorded in the revenue



record as banjar qadim from the year 1956-57 onwards. Even the learned first Appellate Court has concurred with the findings recorded by the learned trial Court to the effect that the land in question was banjar in nature at the time of its purchase by the plaintiff and that such land ordinarily could not be included while determining the permissible area of a landowner.

16. The legal position on the issue is no longer res integra. Hon'ble the Supreme Court in ***Munshi Ram vs. Financial Commissioner Haryana (supra)*** has categorically held that Banjar Qadim, Banjar Jadid and Gair Mumkin lands are liable to be excluded while computing the permissible area. Similar view has consistently been taken by this Court in ***Gopal Ram vs. State of Haryana (supra)***, ***Lall Singh vs. Shri Saroop Krishen, Financial Commissioner (supra)*** and ***Ved Prakash vs. State of Haryana (supra)***. Thus, the inclusion of banjar qadim land while determining surplus area was clearly impermissible in law.

17. Once the very basis of the order dated 30.11.1959 suffers from inherent lack of jurisdiction, the same cannot be validated merely because no objection had been raised by the landowner at the relevant time. A jurisdictional defect strikes at the root of the proceedings and cannot be cured by acquiescence, waiver or estoppel. The principle that there can be no estoppel against statute is equally applicable against the State, where the action itself is contrary to the statutory provisions.

18. This Court further finds merit in the contention raised on behalf of the appellant that despite the alleged declaration of surplus area in the year 1959, the revenue record continued to reflect Raghunath Singh as owner in



possession till the year 1976-77. No mutation reflecting vesting of the land in the State was entered for nearly twenty-six years. There is also no evidence on record to show that possession of the suit land had ever been taken by the State pursuant to the surplus proceedings. In such circumstances, the plaintiff, who purchased the land through a registered sale deed in the year 1978 after examining the revenue record, cannot be denied the status of a bona fide purchaser.

19. Section 41 of the Transfer of Property Act protects a transferee who, after taking reasonable care and acting in good faith, purchases property from an ostensible owner. In the present case, the revenue entries unequivocally reflected Raghunath Singh to be owner in possession of the suit land. The plaintiff cannot be expected to discover a dormant order allegedly passed decades earlier, particularly when the State itself failed to incorporate the same in the official revenue record. The negligence, if any, on the part of the revenue authorities cannot be permitted to prejudice the rights of a bona fide purchaser, who acted upon public record maintained by the State itself.

20. The learned first Appellate Court, while correctly observing that banjar land could not legally be included in surplus area, committed a patent illegality in sustaining the order dated 30.11.1959 solely on the ground that no objection had been raised by the landowner during the surplus proceedings. The reasoning adopted by the learned first Appellate Court is legally unsustainable and contrary to the settled principles governing jurisdictional errors.



21. The plea raised on behalf of the State regarding alleged allotment of the suit land to third parties is also devoid of merit. Neither any specific pleading nor any documentary evidence proving the date, manner or legality of such allotment has been brought on record. In absence thereof, such plea cannot defeat the lawful claim of the plaintiff.

22. Consequently, this Court is of the considered opinion that the judgment and decree passed by the learned first Appellate Court suffer from patent illegality and perversity and are liable to be set aside. The findings recorded by the learned trial Court are based upon proper appreciation of evidence and correct application of law and, therefore, deserve to be restored.

23. Accordingly, the present appeal is allowed. The judgment and decree dated 27.02.1997 passed by the learned Additional District Judge, Gurugram are hereby set aside and those dated 29.07.1991 passed by the learned Trial Court are restored. Consequently, the suit filed by the plaintiff - appellant stands decreed in terms of the judgment and decree passed by the learned trial Court.

24. Pending application(s), if any, shall also stand disposed of.

(DEEPAK GUPTA)
JUDGE

01.07.2026

Neetika Tuteja/Jiten

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No

Uploaded on.: 01.07.2026